CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85650 of 2023

(Arising out of Order-in-Original CAO No. 02/CAC/PCC(G)/SJ/CBS Adj dated 11.04.2023 passed by Principal Commissioner of Customs (General), New Custom House, Mumbai.)

Suswashis Clearing and Forwarding Agency **.....Appellants**
(CB License No. 11/2156)
Shree Guru Dutta Complex CHS Ltd., HO.104,
Plot No.44,45 & 46, Sector 8A, Airoli,
Navi Mumbai – 400 708.

VERSUS

Principal Commissioner of Customs (General), Mumbai **.....Respondent**
New Custom House, Ballard Estate,
Mumbai–400 001.

Appearance:

Shri Ashwini Kumar, Advocate for the Appellants
Shri S.K. Hatangadi, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85083/2024

Date of Hearing: 21.08.2023
Date of Decision: 16.02.2024

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Suswashis Clearing and Forwarding Agency (herein after, referred to as 'the appellants'), holders of Customs Broker License No. 11/2156 assailing Order-in-Original CAO No. 02/CAC/PCC(G)/SJ/CBS Adj dated 11.04.2023 (herein after, referred to as 'the impugned order') passed by the learned Principal Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-I.

2.1. Briefly stated, the facts of the case are that the appellants herein is a Customs Broker (CB) holding a regular CB license issued by the Mumbai Customs under Regulation 7(2) of Customs Brokers Licensing Regulations (CBLR), 2018. On the basis of specific intelligence developed by Customs officers of NSPU/R&I unit, that one exporter M/s G.R. Creation located at Shop No.1, Plot No. B/1,2,3, Sector-19/20, CBD Belapur, Maharashtra is attempting to avail ineligible export benefits through IGST refunds by using bogus GST registration, bogus GST invoices etc., the Shipping Bills, which were filed for such fraudulent exports attempted to be exported out of India, were kept on hold and further investigation was conducted. From the investigation, it appeared that the declared premises of the exporter is a fake address and untraceable at the place of business provided in the GSTIN. It also appeared that actually no IGST/tax had been paid to the Government exchequer in respect of inputs involved in procuring these export goods from the suppliers by the IEC holder/exporter. As in all the above cases, the shipping bills had been filed by the appellants CB, it appeared that they have aided and abetted with the exporter to avail ineligible export incentives.

2.2. On the basis of an offence report dated 28.03.2022 received from customs investigation authorities, the jurisdictional Principal Commissioner of Customs (General), Mumbai-I had concluded that there is a prima facie case against the appellants for having contravened Regulations 10(a), 10(d) and 10(n) of CBLR, 2018. Accordingly, they had initiated show cause proceedings by issue of notice dated 27.04.2022 for initiating inquiry proceedings under Regulation 17 *ibid*, against violations of CBLR as above.

2.3. Upon completion of the inquiry, a report dated 21.07.2022 was submitted by the Inquiry Authority concluding that all charges framed against the appellants for violation of Regulations 10(a), 10(d) and 10(n) of CBLR, 2018 have been 'proved'. Accordingly, the Principal Commissioner of Customs (General), Mumbai, being the licensing authority had passed the impugned order dated 11.04.2023 under Regulations 17(7) and 18 *ibid,* for deemed revocation of CB License of the appellants and for forfeiture of entire amount of security deposit, besides imposition of penalty on the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3.1. Learned Advocate for the appellants contends that all the allegations of violation of Regulations 10(a), 10(d) and 10(n) of CBLR, 2018 have been countered by them. The main argument advanced by the Learned Advocate against the impugned order dated 11.04.2023, is that the procedure set out for inquiry and renovation of the license had not been followed, inasmuch as the opportunity for cross examination of the exporter, sought by the appellants have not been given and the Principal Commissioner of Customs had ordered for deemed revocation of the CB license when there was already an order had been passed on 31.05.2021 whereby their CB license is already revoked. Further, he stated that the appellants CB did not had any prior knowledge about the fact that the exporter is going to claim ineligible export benefits; they had received the documents for exports through logistics middle men Shri Bhaskar Jadhav and Shri Yusuf Siddiqui, who knew the exporter and not directly from the exporter, and they had duly verified the existence of the exporter through the statutory documents in the manner prescribed under CBLR. He further stated that for the acts of misdeeds done by the exporter, the appellants CB cannot be held liable. Thus he claimed that the appellants did not contravene these Regulations *ibid*.

3.2. In support of their stand, the learned Advocate had relied upon the following decisions of the Tribunal and the judgement of the Hon'ble High Court of Delhi, in the respective cases mentioned below:

(i) *Parvath Shipping Agency Vs. Commissioner of Customs (Gen.), Mumbai* - 2017 (357) E.L.T. 296 (Tri.-Mumbai)

(ii) *Bright Clearing & Carriere Pvt. Limited Vs. Commissioner of Customs (Airport and General), Delhi* - Final Order No.51083-51084/2022

(iii) *Exim Cargo Services* Vs. *Commissioner of Customs (General)* - 2019 (368) E.L.T. 1024 (Del.)

(iv) *Thawerdas Wadhoomal* Vs. *Commissioner of Customs (General), Mumbai* - 2008 (221) E.L.T. 252 (Tri.-Mumbai)

4. Learned Authorised Representative (AR) reiterated the findings made by the Principal Commissioner of Customs (General) in the impugned order and submitted that all the violations under sub-regulations (a), (d) and (n) of Regulation 10 *ibid*, has been examined in detail by the Principal Commissioner. The appellants CB got all the documents for export from Shri Bhaskar Jadhav and Shri Yusuf Siddiqui, who are neither IEC holder nor exporter or their representative; they never verified the authenticity of KYC

documents properly and had did not cross check or conducted proper verification of existence of importer at their level. Thus, learned AR justified the action of Principal Commissioner of Customs (General) in deemed revocation of the appellant's CB license, imposition of penalty and forfeiture of security deposit in the impugned order and stated that the same is sustainable in law.

5. We have heard both sides and perused the case records.

6.1. The issue involved herein is to decide whether the appellant Customs Broker has fulfilled all his obligations as required under CBLR, 2018 or not. The specific sub-regulations which were alleged to have been violated by the appellants are Regulations 10(a), 10(d) and 10(n) *ibid*, and hence there are three distinct charges framed against the appellants. We find that the Regulation 10 of CBLR, 2018, provide for the obligations that a Customs Broker is expected to be fulfilled during their transaction with Customs in connection with import and export of goods. These are as follows:

"Regulation 10. Obligations of Customs Broker: -

A Customs Broker shall -

(a) Obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;
…

(d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;
…

(n) verify correctness of Importer Exporter Code (IEC) number, Good and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;"

6.2. We find that the Principal Commissioner of Customs had come to the conclusion that the appellants CB had violated the above stated sub-regulations (a), (d) and (n) of Regulation 10 ibid as they did not have any interaction with the IEC holder/exporter; they did not meet the exporter personally and had no knowledge of the export goods that was exported out of the country; and they also did not properly verify the KYC documents, as the IEC holder/exporter did not exist in the declared address as brought out in the investigation, which prove that they were not careful and not diligent in undertaking the KYC verification. Thus, the adjudicating authority had passed the impugned order confirming all the allegations of violation of above Regulations of CBLR, 2018.

7.1 Before we examine the allegations of violation of various Regulations under CBLR against the appellants, firstly we would like to examine the specific order passed by the learned Principal Commissioner of Customs (General) to see whether it is in compliance with the legal provisions. This is for the reason that when the CB license of the appellants CB was already revoked and the entire security deposit has also been already forfeited earlier vide Order-in-Original No.14/CAC/PCC(G)/PS/CBS (Adj.) dated 31.05.2021, for which an appeal has also been filed by the appellants and the same is pending disposal before this Tribunal. In this regard, we find that Regulations 17 ibid provide for the detailed procedure in conduct of regular inquiry against the CB in terms of CBLR, 2018. The extract of the same is given below:

> "***Regulation 17. Procedure for revoking license or imposing penalty*** *: -*
>
> *(1) The Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the license or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.*
>
> *(2) The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.*
>
> *(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case maybe, shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.*
>
> *(4)* ***The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings****, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines permission to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.*
>
> *(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report*

of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).

(6) The Principal Commissioner or Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the said report.

(7) The Principal Commissioner or Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, ***pass such orders as he deems fit either revoking the suspension of the license or revoking the license of the Customs Broker*** *within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5):*

> ***Provided*** *that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Principal Commissioner of Customs or Commissioner of Customs, as the case maybe.*

(8) Where in the proceedings under these regulations, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, comes to a conclusion that the F card holder is guilty of grounds specified in regulation 14 or incapacitated in the meaning of the said regulation, then the Principal Commissioner of Customs or Commissioner of Customs may pass an order imposing penalty as provided in regulation 18:

> ***Provided*** *that where an order is passed against an F card holder, he shall surrender the photo identity card issued in Form F forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.*

(9) Where in an offence report, charges have been framed against an F card holder in addition to the Customs Broker who has been issued a license under regulation 7, then procedure prescribed in regulations 16 and 17 shall be followed mutatis mutandis in so far as the prescribed procedure is relevant to the F card holder:

> ***Provided*** *that where any action is contemplated against a G card holder alone under these regulations, then instead of authority referred to in sub-regulation (8), a Deputy Commissioner or Assistant Commissioner rank officer shall pass such order as mentioned in the said sub-regulation along with debarring such G card holder from transacting the business under these regulations for a period of six months from such order.*
>
> ***Provided*** *further that where an order is passed against a G card holder, then he shall surrender the photo identity card issued in Form G forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.*
>
> ***Explanation . -*** *Offence report for the purposes of this regulation means a summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of the Customs Broker or a F card holder or a G card holder, as the case may be, under these regulations thereunder which would render him unfit to transact business under these regulations."*

7.2 Plain reading of the above legal provisions of CBLR state in clear terms that the inquiry proceedings has to be followed as per the procedure prescribed in the Regulation 17 ibid. The following are the various steps involved therein in passing an order under Section 17 inquiry proceedings:

(i) Issue of Show Cause Notice to a CB against whom action has been proposed under CBLR

(ii) On the basis of written reply submitted by the CB, determine the grounds which have been accepted by him and those which have not been admitted by the CB, and appoint an Inquiry Officer to inquire into such grounds which are not admitted

(iii) Inquiry officer to take into account all necessary evidence, oral or documentary for ascertaining the correct position

(iv) opportunity for cross-examination of the persons examined in support of the evidence against the CB

(v) Preparation of the inquiry report containing the findings of the inquiry officer

(vi) Obtaining written representation from the CB, if he wish to submit any grounds against the inquiry report

(vii) Principal Commissioner of Customs to consider the inquiry report, CB's representation and provide an opportunity of personal hearing before passing an adjudication order on the inquiry proceedings

(viii) Specific penalties against 'F' card holder, if case the Principal Commissioner comes to a conclusion for such imposition, duly following the procedure as above.

The specific sub-regulation (7) of Regulation 17 ibid, provides the legal authority for the Principal Commissioner/Commissioner of Customs to pass such orders as he deems fit, either revoking the suspension of the license or revoking the license of the Customs Broker within ninety days from the date of submission of the inquiry report. Thus, it is very clear that if a CB license is operational, then the said order can be passed to the effect that it can be revoked or allowed to continue without revocation; or, if the CB license is already suspended, then the same can be further revoked in continuation of such suspension or the said suspension itself can be revoked. Further, such order under Regulation 17(7) ibid, has to be specific and is feasible to be implemented on the date of the issue of such an order. There is no express legal provision, for revocation of a CB license, that is already revoked by an earlier order issued under Regulation 17(7) ibid. In other words, there can be only one order for revocation of the CB license, as it purport to cancel the existing CB license. It is also to be noted that there is no legal provision under Regulation 17(7) ibid, for issue of an order as 'deemed revocation of CB license' to take into effect on a future date, in case the earlier order of the same authority is set aside in any appellate forum, immediately with effect from such order of the appellate authority. In view of the above analysis of the legal provision under Regulation 17(7) ibid, on this ground alone the impugned order is liable to be set aside.

7.3 Further, sub-regulation (1) of Regulation 17 ibid also state in clear terms that the appellants CB shall be served with a show cause notice stating the grounds on which it is proposed to revoke the license or impose penalty against the Customs Broker. In this regard, we find that the SCN dated 27.04.2022 issued in this case, propose to revoke the license and for forfeiture of security deposit and/or for imposition of penalty. From the facts of the case, it is clear that the license No.11/2156 issued to the appellants CB was already revoked by the Order-in-Original No.14/CAC/ PCC(G)/PS/ CBS (Adj.) dated 31.05.2021. Thus, the proposal made in the SCN dated 27.04.2022 is *ab initio* void and thus the SCN itself is not legally sustainable.

7.4 Furthermore, sub-regulation (4) of Regulation 17 ibid also state that the appellants CB shall be entitled to cross-examination and if such opportunity is denied then the reasons for the same shall be recorded in writing. We find that the appellants CB in their written submission made vide letter dated 30.06.2022 to the Inquiry officer had requested for permitting to cross examine the witnesses i.e., Shri Rajesh Dilip Gihar, proprietor of the export firm M/s G.R. Creation and Shri Mohammad Yusuf, Manager of M/s Manjunatha Cargo Pvt. Ltd. However, we find that no such opportunity appears to have been given to the appellants CB. Further, the appellants had also reiterated such a request made before the Principal Commissioner of Customs by submitting their written reply letter dated 12.12.2022. On this, the learned Principal Commissioner of Customs had only mentioned that he had provided sufficient opportunities for personal hearing on four occasions, and thus he is denying the request for personal hearing to the appellants CB on the 5^{th} time, and had proceeded to pass the order in this case as *ex-parte*. From the above, it could be seen that the appellants, at the outset, had mainly challenged the impugned order on the ground that Regulation 17(4) ibid had been violated by the department inasmuch as cross-examination of two witnesses, whose statements were relied upon for adjudication of the dispute was denied. Thus, the appellant has contended that there is gross violation of the principles of natural justice and accordingly, the impugned order is liable to be set aside on such ground alone.

7.5 On perusal of the impugned order dated 11.04.2023, issued under Regulation 17 *ibid*, we find that the appellant had specifically prayed for cross-examination of Shri Rajesh Dilip Gihar, proprietor of the export firm M/s G.R. Creation and Shri Mohammad Yusuf, Manager of M/s Manjunatha Cargo Pvt. Ltd. during the inquiry proceedings. In para 5 of the SCN, the statement Shri Rajesh Dilip Gihar was specifically relied upon to frame charges against the appellants. However, the prayer made by the appellant was not acceded to in the inquiry proceedings, for the reason that investigation report and inquiry report has been furnished to the appellants vide the letter dated 12.12.2022 by speed post and through e-mail and WhatsApp communication, and thus the principles of natural justice has been complied with. In this regard, we find that sub-regulation (4) to Regulation 17 *ibid* specifically provide that the Customs Broker shall be entitled to cross-examination of the persons whose statements were used as grounds for forming the basis of the inquiry proceedings. In case, the inquiry officer is declining to examine such persons, then he is required to record the reasons in writing for denial of such cross-examination. From the perusal of the records there is no finding in the impugned order or in the inquiry report, about why the inquiry officer has not given or denied opportunity for cross-examination of the witnesses to the appellants. In this context, we find that the Hon'ble Telangana High Court had already delivered a judgement on this issue in the case of *Shasta Freight Services Pvt. Ltd. Vs. Pr. Commr. Of Cus., Hyderabad* - 2019 (368) E.L.T. 41 (Telangana), holding that denial of cross-examination of the witnesses to the proceedings are violation of the principles of natural justice. The said judgement was also upheld by the Hon'ble Supreme Court, reported in 2022 (381) E.L.T. 436 (S.C.). The relevant paragraphs in the said judgement are extracted hereinbelow:

> "*20. The second contention of the Learned Counsel for the petitioner is that no opportunity to cross-examine the witnesses was granted, despite the petitioner making a request. We have already seen that under Regulation 20(4) a Customs Broker is entitled to cross-examine the witnesses. But Regulation 20(4) is carefully worded. The entitlement of the Customs Broker to cross-examine, is confined only to "persons examined in support of the grounds forming a basis of the proceedings". The Inquiry Officer viz., the Deputy Commissioner or Assistant Commissioner is entitled under Regulation 20(4) to decline to examine any person on the ground that his evidence is not relevant or material. But he shall record his reasons in writing for so doing. Keeping this in mind, we shall now see the enquiry report to find out whether there was violation of Regulation 20(4).*

21. It is seen from paragraph 22 of the enquiry report dated 10-1-2018 that three things formed the basis for the allegations made against the petitioner. They were - (i) Bills of Entry, (ii) the imported goods and (iii) the statements recorded by DRI under Section 108 of the Customs Act, 1962 from Shri Arjun Pilane and Shri Pramod Bhor. In fact, an objection was raised by the petitioner before the Enquiry Officer that the statements recorded from the witnesses are not admissible as they were extracted under coercion. This contention was rejected and the Enquiry Officer asserted in paragraph 22 of his report that he is entitled to rely upon the same. Paragraph 22 of the enquiry report reads as follows :

> *"22. Further the CB has contended in para-7 of this letter dated 6-11-2017 that the allegations are not backed by evidence and the statements recorded by DRI are coercive. In this regard it is to put forth that a statement made before the Customs officials under Section 108 of the Customs Act, 1962, is a material piece of evidence unlike a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, the statements recorded under Section 108 of the Customs Act, 1962, can be used as evidence against the CB to the extent of establishing the omissions and commissions of the CB with regard to the contravention of the provisions of the CHALR, 2004 as held in the case of Jasjeet Singh Marwah v. UOI by the Hon'ble High Court of Delhi reported in 2009 (239) E.L.T. 417 (Del.). The statements can therefore be used as substantive evidence to hold the CB liable for violation of CBLR, 2013. Also, Shr iArjun Pilane and Shri Pramod Bhor have declared in their statements that they have given the statement voluntarily and not under any coercion. Therefore, it can be seen that the allegations are based on material evidence like the Bill of Entry filed, goods imported and the statements recorded by DRI under Section 108 of the Customs Act, 1962 which is admissible evidence in the Court of law."*

22. Paragraphs 24, 25 and 26 of the enquiry report also shows that the Enquiry Officer was persuaded to hold the petitioner guilty of violation of the Regulations, on the basis of the oral testimony of the aforesaid witnesses. Therefore, the condition precedent under Regulation 20(4) for considering the request of the Customs Broker for cross-examination, stood satisfied. Hence, the petitioner became entitled to cross-examination of these witnesses.

23. But unfortunately, the request for cross-examination was rejected by the Enquiry Officer for the reasons stated in paragraph 27 of his report. Paragraph-27 of the enquiry report reads as follows :

> *"27. As the request for cross-examination of witnesses was made to the Assistant Commissioner (Inquiry Officer) during the 4th PH, necessary correspondence to facilitate the same on 8-1-2018 were made as detailed in para 17 above. While the noticee has further requested for a fresh date and time for cross-examination with at least one week notice; but since the inquiry report has to be submitted within a period of 90 days from the date of issue of Notice as per Regulation 20(5) of the CBLR, 2013, the same is not possible for consideration. Further it needs to be stated that neither of the witnesses has turned up for cross-examination on the scheduled date, despite even an oral communication about the same to Shri Pramod Bhor. … … … Given that the request for cross-examination of persons (whose statements been recorded) was put forth to the Assistant Commissioner on 18-12-2017 only, efforts to enable the same within the time-constraints of inquiry proceedings as per the Regulation 20(5) of CBLR, 2013 were made. Moreover, the primary submission, dated 6-11-2017, was neither directed to the Inquiry Officer nor was the CB forthcoming to either attend the PH or submit supporting documents, until withdrawal of the notice by the Principal Commissioner of Customs. In the event of no such withdrawal and given the limitations of time, but keeping in view of the requirements*

> *of providing opportunity of being heard (which were not attended by the CB) and given the non-presentation of witnesses for cross-examination, it is to state that the findings are based on the available documents at hand i.e. the offence report, statements of Arjun Pilane and Pramod Bhor, the Prohibition order and the submissions of the CB, read with CBLR, 2013."*

> *24. Therefore, it is clear that there was a gross violation of the principles of natural justice. Unfortunately for the Department, the principles of natural justice have also been in-built into Regulation 20(4). Therefore, the Enquiry Officer could not have violated the mandate of law. It would have been a different matter if the Enquiry Officer had chosen not to rely upon the statements of those two witnesses, but to proceed only on the basis of other available documents. But in more than one place, the Enquiry Officer affirmed his reliance upon the statements of witnesses, among other things. Therefore, the impugned order based upon such an enquiry report is contrary to the procedure prescribed by Regulation 20(4) and clearly in violation of the principles of natural justice"*

7.6 We also find that the Special Leave Petition No. 18136 of 2019 filed by the Revenue against the above referred judgment of Hon'ble Telangana High Court was dismissed by the Hon'ble Supreme Court, holding that revocation of Custom Broker License would not be sustainable, if cross-examination of witnesses, whose statements were relied upon in inquiry report, was not provided and thus, there was a breach in Regulation 20(4) of the CBLR, 2013 (*Pari-materia* with Regulation 17 (4) of CBLR ,2018). In view of the above discussions and on the basis of the judgement of the Hon'ble High Court of Telangana upheld by the Hon'ble Supreme Court, the impugned order is liable to be set aside, on the limited aspect of non-compliance of the provisions contained in Regulation 17(4) of the CBLR, 2018.

8.1 We would now take up for examination each of the alleged violations of CBLR, 2018, one by one, as follows. In respect of Regulation 10(a) the adjudicating authority had found that the appellants CB did not personally meet the owner of exporter firm M/s G.R. Creation and obtained the documents from one Shri Yusuf Siddiqui, who worked in import-export trade at JNCH; and thus he concluded that the appellants CB neither in contact with the exporter nor the intermediaries. Hence he concluded that the appellants CB have violated Regulation 10(a) ibid.

8.2. From the facts of the case and the voluntary statements given by various persons during investigation of the case, it is seen that Shri Sachin Sitaram Shinde, 'F' card holder and proprietor of the appellants CB had obtained the export documents for the impugned goods covered under the present exports from one Shri Yusuf Siddiqui, who had in turn known the exporter M/s G.R. Creation through Shri Bhaskar Jadhav, his known accomplice in the import export trade.

8.3 The impugned exports were exported through four Shipping Bills (S/B) all dated 28.11.2018 for which the NSPU/R&I Customs investigation found that the FOB value has not been realized when they conducted address verification was done on 10.12.2018. Thereafter, voluntary statement from Shri Rajesh Dilip Gihar, proprietor of the export firm M/s G.R. Creation was recorded on 17.01.2019. However, subsequently Shri Sachin Sitaram Shinde, proprietor of the appellants CB was called for participating in the investigation only on 03.03.2022 for recording his statements under Section 108 of the Customs Act, 1962. Further, the allegation against the exporter is that they attempted to avail ineligible export incentives such as Drawback, RoSL and MEIS benefits upon export of goods. Further, it is also alleged against the exporter that they in respect of the input credit taken by them, there was no actual IGST was paid. Thus, it is seen that alleged ineligible availment of export benefits is solely on account of the action taken by the exporter such as taking ineligible input credit, filing wrong declaration for claiming ineligible export incentives or the failure on the exporter to obtain export proceeds within a reasonable time frame. There is no role of Customs Broker in the above activities of the exporter. Further in respect of the exports that have taken place in November, 2018 necessary investigation was initiated in December, 2018, but the investigation against the appellants CB was started only during March, 2022. Thus, there is no ground for such delayed action by the department, particularly when there is no role for the appellants CB in the activities of the exporter.

8.4 We also find that on the above issue, the Tribunal in the case of *K.S. Sawant & Co.*(supra) had already held that accepting the documents through logistics operator is not barred by CBLR. The relevant paragraph of the said order is extracted below:

> *"5.1 From the records, it is clear that the business in respect of the client M/s. Advanced Micronics Devices Ltd., was brought in by Shri Sunil Chitnis, who claims himself to be a sub-agent of the appellant CHA. The statements of Shri Badrinath and Shri Sunil Chitnis amply proves this fact. The question is, merely because the appellant procured the business through an intermediary who is not his employee, can it be said that he has sub-let or transferred the business to intermediary. The Tribunal in the case of*

> *Principal Commissioner of Customs v. Chhaganlal Mohanlal & Co. Ltd. [2006 (203) E.L.T. 435 (Tri. - Mum.)], held that if the Customs clearance has been done through intermediary and business was got through intermediary, the same is not barred by the provisions of CHALR, 2004 and it cannot be stated that the appellant has sub-let or transferred his licence. In the case of Krishan Kumar Sharma v. Principal Commissioner of Customs, New Delhi reported in 2000 (122) E.L.T. 581 (Tri.), this Tribunal held that the mere fact of bills raised on the intermediary cannot be held against the CHA firm to prove that the CHA licence was sub-let or transferred. Therefore, in the light of the judgments cited above, the charge of violation of Regulation 12 is not established. As regards the violation of Regulation 13(a), the adjudicating authority himself has observed that the "I have no doubt to say that the CHA might have obtained the authorisation but it is surely not from the importer. Therefore, the authorisation submitted is not a valid one". This finding is based on a presumption. Obtaining an authorisation from the importer does not mean that the same should be obtained directly; so long as the concerned import documents were signed by the importer, it amounts to authorisation by the importer and, therefore, it cannot be said that there has been a violation of Regulation 13(a). … The question now is whether revocation of licence is warranted for such a violation. In our view, the punishment should be commensurate with the gravity of the offence. Revocation is an extreme step and a harsh punishment, which is not warranted for violation of Regulation 13(b). Accordingly, we are of the view that forfeiture of security tendered by the appellant CHA is sufficient punishment and revocation is not warranted. Accordingly, we set aside the order of the revocation and direct the Principal Commissioner of Customs (General) to restore the CHA licence subject to the forfeiture of entire security amount tendered by the CHA."*

In the absence of any document to prove the claim of mis-declaration of export goods, the findings given by the learned Principal Commissioner of Customs in the impugned order that the appellants has aided and abetted the exporter in availing ineligible export incentives, is difficult to be proved for fastening such liability on the appellants CB for holding them responsible for violation of Regulation 10(a) ibid.

9. In the instant case, the ineligible claim for export incentives was found by the department only on the basis of specific investigation conducted by the NSPU/R&I customs authorities, and hence the appellants CB cannot be found fault for the reason that they did not advise their client importer to comply with the provisions of the Act. Further, the voluntary statement given by Shri Sachin Sitaram Shinde, Proprietor of the appellants CB firm was on 03.03.2022 i.e., almost 3 years subsequent to before Customs investigation authorities clearly show that such mis-declaration was not known to the appellants CB. Thus, there is no possibility for the appellants CB to bring to the notice of the Deputy Commissioner of Customs (DC) or Assistant Commissioner of Customs (AC) about the mis-declaration of

imported goods. Thus, we are of the considered view that the violation of Regulation 10(d) *ibid*, as concluded in the impugned order is not sustainable.

10.1 Learned Principal Commissioner of Customs (General) had come to the conclusion that the CB had violated the provision of Regulation 10(n) *ibid,* on the ground that the appellants had never met the exporter/IEC holder, and they were not careful and diligent in undertaking the KYC verification process about the background of exporter.

10.2 We find from the records, that the appellants CB had obtained the KYC documents from the exporter M/s G.R. Creation vide their authorization letter and verified the existence of the exporter through the Certificate of Importer-Exporter Code issued by the Additional Director General of Foreign Trade, Ministry of Commerce and Industry, Government of India indicating the name along with address, name of the proprietor; Aadhaar Card of the proprietor/exporter; signature and account verification letter from ICICI Bank; GSTIN registration certificate.

10.3 In this regard, we find that CBIC had issued instructions in implementing the KYC norms for verification of identity, existence of the importer/exporter by Customs Broker in Circular No. 9/2010-Customs dated 08.04.2010, and verification of any two documents among specified documents is sufficient for fulfilling the obligation prescribed under Regulation 10(n) of CBLR, 2018. We find that in the present case, the appellants CB had obtained the KYC documents and submitted the same to the Customs Department. Thus, we do not find any legal basis for upholding of the alleged violation of Regulation 10(n) *ibid* by the appellants in the impugned order on the above issue.

10.4 We find that in the case of *M/s Perfect Cargo & Logistics Vs. Principal Commissioner of Customs (Airport & General), New Delhi* 2021 (376) E.L.T. 649 (Tri. - Del.), the Tribunal had decided the issue of KYC verification of the importer/exporter by the Customs broker and the requirements specified in the CBLR, 2018.

> *"34. The basic requirement of Regulation 10(n) is that the Customs Broker should verify the identity of the client and functioning of the client at the declared address by using, reliable, independent, authentic documents, data or information. For this purpose, a detailed guideline on the list of documents to be verified and obtained from the client is contained in the*

> *Annexure to the Circular dated April 8, 2010. It has also been mentioned in the aforesaid Circular that any of the two listed documents in the Annexure would suffice. The Principal Commissioner noticed in the impugned order that any two documents could be obtained. The appellant had submitted two documents and this fact has also been stated in paragraph 27(a) of the order. It was obligatory on the part of the Principal Commissioner to have mentioned the documents and discussed the same but all that has been stated in the impugned order is that having gone through the submissions of the Customs Broker, it is found that there is no force in the submissions. The finding recorded by the Principal Commissioner that the required documents were not submitted is, therefore, factually incorrect.*
>
> *35. The Principal Commissioner, therefore, committed an error in holding that the appellant failed to ensure due compliance of the provisions of Regulation 10(n) of the Licensing Regulations."*

10.5 Further, we also find that the Hon'ble High Court of Delhi has held in the case of *Kunal Travels (Cargo) Vs. Principal Commissioner of Customs (I&G), IGI Airport, New Delhi* reported in 2017 (354) E.L.T. 447 (Del.), the appellants CB is not an officer of Customs who would have an expertise to identify mis-declaration of goods. The relevant portion of the said judgement is extracted below:

> *"The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area....... It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE Code given to it by a client for each import/export transaction. When such code is mentioned, there is a presumption that an appropriate background check in this regard i.e. KYC etc. would have been done by the customs authorities."*

10.6 From the above, we also find that the above orders of the Tribunal and higher judicial forum are in support of our considered views in this case in respect of the compliance with respect to Regulation 10(n) *ibid*.

11. In view of the foregoing discussions, we do not find any merits in the impugned order passed by the learned Principal Commissioner of Customs (General), Mumbai in deemed revocation of the CB license of the appellants; for forfeiture of security deposit second time and for imposition of penalty, inasmuch as there is no violation of regulations 10(a), 10(d) and 10(n) *ibid*, and the findings in the impugned order is contrary to the facts on record. Further, the impugned order is not sustainable as it has been issued in violation of Regulation 17(7) ibid and in non-compliance with the provisions contained in Regulation 17(4) ibid in terms of the judgement of the Hon'ble Supreme Court in the case of *Shasta Freight Services Pvt. Ltd.* (supra),

inasmuch as the principles of natural justice in affording the opportunity for cross examination was not followed in the impugned order.

12. Therefore, by setting aside the impugned order, we allow the appeal in favour of the appellants.

(Order pronounced in open court on 16.02.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha